

DESMARAIS LLP

www.desmaraisllp.com

NEW YORK
SAN FRANCISCO
WASHINGTON, DC

Lee J. Matalon
New York
Direct: 212-808-2918
LMatalon@desmaraisllp.com

March 20, 2023

Honorable Philip M. Halpern
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Re: *Layne v. NYDOCCS et al.*, 19-cv-4531-PMH (S.D.N.Y.)
Plaintiff's Letter Motion Seeking Leave to Redact and File Under Seal

Dear Honorable Judge Halpern:

Plaintiff respectfully requests permission to seal certain exhibits to his Opposition to Defendants' Motions *in Limine*, filed concurrently. Plaintiff makes this request pursuant to the Local Rules of the Southern District of New York, The Notice Regarding Privacy and Public Access to Electronic Civil and Criminal Case Files of the Southern District of New York, and Your Honor's Individual Rule 5(A). The exhibits in question are Plaintiff's confidential, highly private medical records.

Although "[t]he common law right of public access to judicial documents is firmly rooted in our nation's history," this right is not absolute, and courts "must balance competing considerations against" the presumption of access. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006) (internal quotation marks omitted); *see also Nixon v. Warner Commc'ns., Inc.*, 435 U.S. 589, 599 (1978) ("[T]he decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case."). Indeed, this Court has described "medical records, treatment and diagnosis" as information "that should be treated with caution and may warrant a motion for approval of sealed or redacted filing." *See* Individual Rule 5(A).

The Court Should Permit Plaintiff's Narrowly Tailored Redaction Requests

Plaintiff moves to seal his medical records, which contain highly private and personal medical and psychological details. These include Exhibits 8 and 9 to the Declaration of Eli Balsam, filed concurrently.

The Second Circuit applies a three-step analysis to determine whether to place a document under seal. *Lugosch*, 435 F.3d at 114. Although motion exhibits are judicial documents presumptively entitled to a right of access (step 1), Plaintiff has strong countervailing privacy interests in preventing public disclosure of his highly personal, private medical and psychological records (steps 2 and 3). *See, e.g., Roberts v. Lederman*, No. 04-CV-00033 (NGG) 2004 WL 2238564, at *7 (E.D.N.Y. Oct. 4, 2004) ("[T]he nature of much of the information in question is traditionally private as it involves illness and private conduct between" dying Beatle George Harrison and his physician); *Doe v. Apfel*, No. 98-CV-182 (JG), 1999 WL 182669, at *3 (E.D.N.Y.

DESMARAIS LLP

Honorable Judge Halpern

March 20, 2023

Page 2

March 22, 1999) (“Almost every document in the record contains a lengthy, detailed and potentially embarrassing description of the illnesses from which Doe suffers. These illnesses do not have any significant public ramifications.”). The privacy interests are even more compelling where, as here, the case involves allegations of sexual assault.

Conclusion

Plaintiff respectfully requests that the Court permit Plaintiff to file his medical records under seal.

Dated: March 20, 2023

Respectfully submitted,

Application granted. The Court approves Plaintiff's redactions to Exhibits 8 and 9 of the Balsam Declaration (Docs. 164-2 and 164-3). The unredacted versions shall remain under seal.

The Clerk of Court is respectfully directed to terminate the motion sequence pending at Doc. 162.

SO ORDERED.



Philip M. Halpern
United States District Judge

Dated: White Plains, New York
March 21, 2023

/s/ Lee J. Matalon

Tamir Packin
tpackin@desmaraisllp.com
Ryan Dowell
rdowell@desmaraisllp.com
Ryan Thorne
rthorne@desmaraisllp.com
Lee J. Matalon
lmatalon@desmaraisllp.com
William A. Vieth
wvieth@desmaraisllp.com
Eliyahu Balsam (*pro hac vice*)
ebalsam@desmaraisllp.com
Raymond Habbaz
rhabbaz@desmaraisllp.com
DESMARAIS LLP
230 Park Avenue
New York, New York 10169
Tel: (212) 351-3400
Fax: (212) 351-3401

Attorneys for Plaintiff
Jaquan Layne